

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8657 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JALAMSING MALSANG VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/03/2000

ORAL JUDGEMENT

#. District Magistrate, Banaskantha at Palanpur, passed an order on September 15, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA

Act. The detaining authority took into consideration four offences registered against the detainee under the Bombay Prohibition Act and the authority also took into consideration the statements of 4 anonymous witnesses, whose identity is not disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority also considered the possibility of resorting to less drastic remedies and came to a conclusion that the powers under the PASA Act are required to be exercised in order to immediately prevent the petitioner from pursuing his illegal and anti-social activities.

#. The detainee challenges the order of detention in this petition under Article 226 of the Constitution of India on various grounds. However, Ms. Subhadhraben Patel, appearing for the petitioner has restricted her arguments to the fact that the detaining authority has exercised powers under Section 9(2) of the PASA Act improperly. This has affected the right of the detainee of making an effective representation. The detention, therefore, would stand vitiated and the order therefore, may be quashed and set aside by allowing this petition.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. While considering the rival side contentions, glaring feature in the instant case is that the detaining authority has relied upon the statements of four anonymous witnesses, identity of whom is not disclosed in exercise of powers under Section 9(2) of the PASA Act. The detaining authority has observed that the privilege is to be exercised for the safety of the witnesses and the fear expressed by them qua the petitioner is correct. However, it appears that the statements have not been verified by the detaining authority. They are verified by Dy.S.P., Palanpur. The detaining authority makes no reference to the verification being carried out by Dy.S.P. and as such, it cannot be considered to be a case where verification is got done through Dy.S.P. by the detaining authority and the subjective satisfaction is based on such verification. As such, the subjective satisfaction recorded by the detaining authority for exercise of powers under section 9(2) of the PASA Act is not based on any material and the fear expressed by the witnesses has not been verified by the detaining authority and as such, what is observed in the grounds of detention cannot be considered as subjective satisfaction. That being so, it is an improper exercise of powers under section 9(2) of the PASA Act, which has

directly affected the right of the detenue of making an effective representation before appropriate authorities. The order of detention, therefore, would be vitiated so also the detention. The petition therefore deserves to be allowed.

#. No affidavit-in-reply is filed. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. The petition is allowed. The impugned order of detention dated September 15, 1999 passed by District Magistrate, Banaskantha at Palanpur, is hereby quashed and set aside. The detenue - Jalamsing Malsing Vaghela, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

#. Ms. Patel states that the detenue is shifted to Baroda Central Prison. Hence, writ to be sent to Baroda Central Prison.

[A.L. DAVE, J.]

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